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Environment and Land Tribunals Ontario

Assessment Review Board

Annual Report 2009-2010

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To the Honourable Chris Bentley, Attorney General

Minister:

We have the pleasure of submitting, for your approval, the Assessment Review Board 2009-2010 Annual Report.

Respectfully submitted,

Michael Gottheil
Executive Chair
Environment and Land Tribunals Ontario

Ali Arlani
Chief Executive Officer
Environment and Land Tribunals Ontario

2010

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Chair's Message

On behalf of the Assessment Review Board (ARB), I am pleased to present our 2009-10 Annual Report.

This report covers the fiscal year ending March 31, 2010. During this period the Board received approximately 54,000 appeals and resolved over 44,000 appeals.

I was appointed Chair of the ARB and Executive Chair of the Environment and Land Tribunals Ontario (ELTO) of which the ARB is a part, in November, 2009.

With changes to the Assessment Act for the 2009 taxation year, the Board introduced revised Rules of Practice on April 1, 2009. These changes followed extensive consultations with our stakeholders and reflect the evolution of the Board's practices. In the period covered by this report, stakeholders were consulted about the operation of the new Rules and the groundwork was laid for an informative and valuable discussion with stakeholders on that issue early in 2010/11.

During the 2009/10 fiscal year, both central and regional training sessions were held for all active Members covering the changes to the act.

As well, the ARB continued to streamline and refine its processes and procedures. For the 2009 tax year, we revised our website and developed new appeal forms and communication materials. The website continued to be a key resource for the public, providing useful information and the ability to file appeals online.

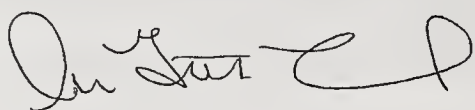
ELTO brings together the ARB, the Board of Negotiation, the Conservation Review Board, the Environmental Review Tribunal and the Ontario Municipal Board. I believe the decision by the Government to group these five important tribunals reflects a recognition of the key role each plays in resolving disputes within the applicable legislative framework to support strong, healthy communities, and of the potential to better fulfill that role by bringing them together.

I also believe administrative tribunals must constantly work to be accessible, principled and just, and must engage their users, staff and Members in the design and ongoing assessment of their processes. Tribunals must operate in ways that attract, support and retain highly-skilled staff and Members, and must have a sharp focus on meeting the needs of their users and advancing the public interest within the applicable legal and policy frameworks.

The staff and Members of ELTO's tribunals are dedicated to achieving these important goals. In particular, the ARB is fully committed to resolving assessment appeals in a fair, open and timely manner, to exemplifying the highest standards

of professionalism, integrity and good public service, and to providing access to justice for all who wish to use our services.

I extend my thanks to Rick Stephenson, Executive Vice-Chair, for his assistance with transition and his work as the former Chair. I also thank each of the Vice-Chairs and Members for their professionalism and their dedication to serving those who use the Board's services, and Shirley Lee Collins, Senior Case Manager and Registrar, and her staff for their excellent work in ensuring the ARB meets its mandate and service standards. Finally, I would like to thank Ali Arlani, ELTO's CEO, for his support, and for his achievements over the past few years, leading the operational and administrative staff through a successful, though sometimes challenging transition to ELTO. I look forward to working with Members, staff, stakeholders and the broader community throughout the 2010/11 fiscal year and beyond to help realize the ARB's potential within ELTO.

A handwritten signature in black ink, appearing to read 'Michael Gottheil', with a stylized flourish at the end.

Michael Gottheil
Chair - Assessment Review Board
Executive Chair – Environment and Land Tribunals Ontario

SECTION 1: Assessment Review Board (ARB) Overview

Overview of the Property Assessment System



The above diagram illustrates the major participants in the property assessment system of Ontario. The provincial government, through the Ministry of Finance, sets the laws regarding property assessment. Municipalities are responsible for setting tax rates and collecting property taxes. The Municipal Property Assessment Corporation (MPAC) assesses and classifies all properties in Ontario. If there is a dispute between a property owner and MPAC, the property owner can file an appeal with the Assessment Review Board (ARB).

Purpose of the Board

The Assessment Review Board (ARB) is an independent adjudicative tribunal established under the Assessment Act, with a mandate to hear appeals about property assessment and classification. The ARB hears these appeals and renders a decision based on the applicable law and the evidence presented at the hearing.

The Board, which operates under a variety of legislation, also deals with appeals on property tax under the Municipal Act, the City of Toronto Act and the Provincial Land Tax Act.

The Board's primary mandate is to ensure that properties are assessed in accordance with the provisions of the Assessment Act. ARB hearings are held throughout the province, generally in the municipality where the property is located. Through the hearing process, the appellants, or their representatives, are given the opportunity to test the MPAC assessment and to present their case to the Board.

Along with other regulatory and adjudicative agencies, the ARB helps form the administrative justice sector in Ontario. These important agencies provide justice that is less expensive, less complex and less formal than the courts.

Agency and Board Members are an integral component of Ontario's legal infrastructure. They possess specialized knowledge of relevant legislation and matters in their particular field.

History and Jurisdiction

Property assessments have been conducted in what is now Ontario since 1793. In 1970, the province assumed the role of assessing property from municipalities and replaced the Courts of Revision with the Assessment Review Court (ARC). ARC was renamed the Assessment Review Board in 1983.

With the enactment of the Fair Municipal Finance Act, 1997, the ARB became the province's sole adjudicative tribunal for property assessment appeals. The legislation reduced duplication and ensured that the Board was the final tribunal of appeal for such appeals. Prior to 1998, ARB decisions could be appealed to the Ontario Municipal Board (OMB).

In 1998, an amendment to the Assessment Review Board Act gave the ARB the capacity to dismiss frivolous appeals.

Decisions by the Board are final and binding, subject only to appeal to Divisional Court on questions of law when the Court grants leave to appeal. The Board also exercises the power to review its decisions.

Beginning with the 2009 tax year, changes to the Assessment Act require owners of residential, farm and conservation lands, and managed forests to file a request for reconsideration with MPAC, and/or the Program Administrator (for farm, managed forest or conservation land), before they may file an appeal with the ARB.

The Board's jurisdiction and its authority are defined by the Assessment Review Board Act, the Assessment Act, the Municipal Act, 2001, the City of Toronto Act, 2006, the Provincial Land Tax Act, 2006, the Education Act and the Statutory Powers Procedure Act.

Agency Cluster

In November of 2009, Michael Gottheil was appointed Chair of the Assessment Review Board and, as Executive Chair, to lead the Environment and Land Tribunals Ontario (ELTO) cluster.

ELTO is a group of five tribunals that resolve appeals, applications and other disputes, under some 100 statutes, in relation to land use planning, environmental and heritage protection, property assessment, land valuation and other matters.

ELTO is the first cluster of tribunals created under the authority of the Adjudicative Tribunals Accountability, Governance, and Appointments Act, 2009. That Act permits the government to designate two or more adjudicative tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone.

The five tribunals included in the cluster are: the Assessment Review Board, the Conservation Review Board, the Board of Negotiation, the Environmental Review Tribunal and the Ontario Municipal Board.

Changes in Rules of Practice and Procedure

After changes to the *Assessment Act* were made for the 2009 and subsequent taxation years, the ARB's amended its *Rules of Practice and Procedure*. The amended Rules took effect April 1, 2009. To view the Rules visit the ARB's website.

Changes in Legislation and Regulations

(Note: the following changes in legislation and regulations are a selected list of key provisions affecting the Assessment Review Board.)

1. Assessment Act

On June 5, 2009 the Budget Measures Act, 2009 received Royal Assent. The Assessment Act was amended by the addition of clauses (c) and (c.1) to subsection 2(2) which allows the Minister of Finance to define and prescribe machinery and equipment for the purposes of paragraph 18 of subsection 3(1) and paragraph 18.1 of subsection 3(1). Subsection 3(1) of the Assessment Act was amended by adding paragraph 18.1 to exempt machinery and equipment used for the purposes of energy conservation or efficiency from taxation when prescribed by the Minister of Finance.

2. Assessment Review Board Act

On December 15, 2009 with the Royal Assent of the Good Government Act subsection 8.1(1) of the Assessment Review Board Act was amended to permit the Assessment Review Board to set and charge fees for any proceedings brought before it under any Act. Also a new section 11 was added to protect members of the Board, the registrar and employees from personal liability when performing their duties in good faith under any act.

3. Classification of Buildings and Structures That Become Vacant

On May 5, 2009 Ontario Regulation 185/09 was filed concerning the classification of buildings or structures that become vacant. The substantial usability or unusability of the building or structure may determine classification.

4. Housekeeping Regulation

On July 16, 2009 Ontario Regulation 262/09 was filed concerning additional information to be included on the assessment roll under subsection 14(1), adjustments under section 19.1 and appeals under the Assessment Act.

5. Sour Cherries

On October 1, 2009 Ontario Regulation 370/09 was filed concerning when land used to process sour cherries might be included in the farm property class.

SECTION 2: Operations 2009-2010

2009-2010 Caseload

At the beginning of the 2009-2010 fiscal year, the ARB had a total of 78,000 appeals on file. During the 2009-2010 fiscal year, the Board received approximately 54,000 appeals. By the end of the fiscal year, over 44,000 appeals were resolved. The bulk of the outstanding caseload at the end of the fiscal year consisted mostly of complex, non-residential properties from previous years.

In complex cases more time may be required by the parties to gather evidence and prepare testimony.

Table 1: Caseload 2007-2008 to 2009-2010

YEAR		2007-2008	2008-2009	2009-2010
Opening Caseload Balance		87,000	78,000	79,000
Caseload Received *	+	53,000	46,000	54,000
Total Caseload for year	=	140,000	124,000	133,000
Resolved Caseload	-	61,000	45,000	44,000
Balance at the End of the Fiscal Period	=	78,000	79,000	89,000

Note: The deadline for assessment appeals to the ARB was March 31, 2010 or 90 days from the date of MPAC's request for reconsideration decision.

* **Caseload Received** includes all types of appeals dealt with by the Board, including annual assessment appeals, supplementary and omitted assessment appeals, Municipal Act appeals and City of Toronto Act appeals.

Performance Results

The ARB hears all assessment appeals in Ontario. Generally, residential appeals can be streamed directly to a full hearing and are consequently resolved faster than many non-residential appeals, which may require multiple hearing events.

The ARB works to resolve residential appeals within one year of filing. In the 2008-09 fiscal year, 100 per cent of unrepresented residential appeals were resolved within 365 days of filing.

The ARB strives to issue its decisions in a timely manner. In the 2009-2010 fiscal year, 89 per cent of decisions were issued within 60 days of the hearing.

Pre-hearings

Many appeals concerning complex, non-residential properties require extensive hearing time and may be presided over by a panel of Members.

These appeals are screened based on established criteria such as property classification, size and assessed value, and may be directed into pre-hearings. During the pre-hearing process, the Board works with the parties to establish a schedule for proceeding and may issue procedural orders to direct exchanges of information and pre-filings. Pre-hearings have the potential to expedite the hearing process and allow parties to reach a settlement before a hearing begins.

Teleconferences

It can sometimes be difficult and time consuming to coordinate a hearing when parties need to travel across the province. For these cases, the Board conducts telephone conferencing, or “electronic hearings.” In 2009-2010, the Board conducted more than 2,500 teleconferences. Teleconferencing is a practical way to provide status updates and determine next steps toward issuing procedural or consent orders, resolving contentious matters and, in some instances, settling appeals. This service saves time and money by reducing travel for all parties involved in Board hearings.

Website & Electronic Service Delivery (ESD)

The Board’s website plays a key role in providing information and services to the public.

In 2009-2010, the Board enhanced its existing E Services to continue providing efficient ESD. Throughout the year, the Board’s website, E Status and E File options were updated and improved, with a focus on user friendliness and clear language.

In addition to providing information to the public, the website hosts three main services:

E File

E File is a tool that allows the public to submit assessment appeals via the ARB website. All required information and the appropriate filing fees are collected and verified electronically online. E Filed appeals are accepted immediately into ARBIS, the ARB’s electronic case management system. E Filed appeals do not require manual data entry, reducing the required processing time. For the 2009 tax year, the Board revised its E File system to utilize newer technology and reflect changes to the appeal process.

E Status

E Status allows appellants to check the status of their appeals directly from the ARB website by entering the 19-digit roll number assigned to their property. E-Status displays information about appeals, hearings (once scheduled) and decisions (once issued). In 2009-2010, E Status received approximately 2,000 to 3,000 inquiries each month.

E Calendar

E Calendar provides appellants, representatives and other interested parties current information about ARB hearings throughout Ontario. Hearing information can be obtained by searching for the location of a property or the location of a hearing.

Public Information and Outreach

The Board strives for effective and timely communication with the public and stakeholders. To communicate more effectively, the Board has:

- Created a sample hearing video to help people prepare for their own hearing.
- Increased correspondence with appellants via e-mail. The Public Inquiry department answered over 4,000 e-mails. Clients used e-mail to inform the Board about a variety of issues, including change of address, withdrawals and requests for written reasons.
- Updated its appeal forms and instructions to include improvements suggested by the public, staff and Adjudicators.

Member Training

Ongoing training for Members remains a priority at the ARB. After the implementation of new legislative provisions in the Assessment Act, the ARB held Regional Training Sessions in the spring of 2009. These sessions were followed-up by in-hearing mentoring conducted by senior Board Members, with courses being tailored to the issues Members will face during ARB hearings. As well, Intensive Training Seminars (ITS) are held annually to train all Members together, and all Members are encouraged to attend educational courses available through the Society of Ontario Adjudicators and Regulators (SOAR).

SECTION 3: Financial Summary

Expenditures

Table 2: Expenditures 2007-2008 to 2009-2010

ACCOUNT ITEMS	2007-2008 (\$)	2008-2009 (\$)	2009-2010 (\$)
Salary and Wages	4,488,481	4,717,539	4,544,199
Employee Benefits	623,291	653,728	610,359
Transportation and Communications	658,930	608,274	496,175
Services	2,426,646	1,994,542	2,325,650
Supplies & Equipment	190,656	191,616	182,710
Transfer Payment	NIL	NIL	NIL
TOTAL	8,388,004	8,165,699	8,159,093*

* In 2009-10, the ARB had a surplus of 2.4%, in part due to vacancies and in part due to normal operational variances.

Revenue

Under the authority of the Assessment Review Board Act, appeals must be accompanied by the required filing fee. The filing fee, which varies depending on property type, is collected by the ARB and is immediately transferred to the Ministry of Finance.

Table 3: ARB Revenue 2007-2008 to 2009-2010

FISCAL YEAR	REVENUE COLLECTED (\$)
2007-2008	698,051
2008-2009	2,224,487
2009-2010	3,276,776

SECTION 4: ARB Members 2009-2010

ARB Members (During the 2009-2010 fiscal year)

<u>Full-Time</u>	<u>Original ARB Appointment</u>
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GOTTHEIL, Michael (Chair)	November 2, 2009
STEPHENSON, Richard (Executive Vice-chair)	April 7, 1993
BUTTERWORTH, Robert (Vice-Chair)	November 19, 1997
MATHER, Susan (Vice-Chair)	November 19, 1997
BOURASSA, Marcelle (Vice-Chair)	April 11, 2006
COWAN, Bernard A.	December 19, 1997
WYGER, Joseph M.	May 27, 1998
WHITEHURST, Donald	May 18, 2005
WALKER, Janet Lea	September 4, 2007

<u>Part-Time</u>	<u>Original ARB Appointment</u>
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ANDREWS, Peter	May 18, 2005
BACHLY, David	November 26, 1970
BELANGER, Mignonne	January 11, 1984
BIRNIE, Ian	May 6, 1999
BROWN, Douglas C.	June 30, 2000
BROWNLIE, John D.	May 27, 1998
CASTEL, André	November 19, 1997
CORCELLI, Richard J.	January 15, 2007
CUPIDO, Charles	October 1, 1980
DRIESEL, Sandra	March 16, 2000
FENUS, Andrew	May 30, 2007
FERGUSON, Nancy	April 11, 2006
GRIFFITH, E.J.W.	November 12, 1970
GRIFFITH, Jennifer	September 17, 2004
HILL, Don	December 23, 1970
INGLIS, Vern	May 27, 1998
JUSTIN, Edith	November 17, 1970
KANUCK, Nalin Dr.	May 7, 2003
KOWARSKY, Barbara	May 18, 2005
LAFLAMME, Jacques	August 25, 2004
LAREGINA, Anthony	January 15, 2007
LAWS, Joanne	February 10, 2006
LEVASSEUR, Romeo	May 18, 2005
LIMOGES, Rick	January 15, 2007
MACGILLIVRAY, J.	February 8, 1984
MACKAY, Ann	August 25, 2004

MARQUES, Ana Cristina	May 18, 2005
MINNIE, Garry	March 1, 2006
MORIN, Gilles	September 30, 2004
NALEZINSKI, Les	March 1, 2006
OLIVEIRA, Evangelista (Ivan)	May 17, 1999
PLUMSTEAD, Nicoll	May 18, 2005
RADE, Bernice M.	August 25, 2004
ROMAS, George	August 25, 2004
SAPONARA, Fausto	May 18, 2005
SHARMA, Marilyn	January 15, 2007
SMITH, Barry A.	November 26, 1970
STILLMAN, Paul M.	March 26, 1975
SUTTON, William (Bill)	September 17, 2004
TCHEGUS, Robert	February 10, 2006
TENNANT, Bryan R.	March 31, 2000
TERSIGNI, Joe	May 30, 2001